

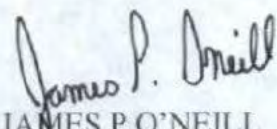


POLICE DEPARTMENT

-----X
In the Matter of the Disciplinary Proceedings :
- against - : FINAL
Police Officer Joongsuk Hwang : ORDER
Tax Registry No. 943383 : OF
Brooklyn Court Section : DISMISSAL
-----X

Police Officer Joongsuk Hwang, Tax Registry No. 943383, Shield No. 18437, Social Security No. ending in [REDACTED], having been served with written notice, has been tried on written Charges and Specifications numbered 2015-13396 and 2016-15449, as set forth on form P.D. 468-121, dated April 6, 2015 and March 18, 2016 and after a review of the entire record, has been found Guilty of Specifications 1, 2 and 6. Respondent having pleaded Guilty to Specification Nos. 3-5 in Case No. 2015-13396, and to Specification Nos. 1 and 2 in Case No. 2016-15449, is found Guilty.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Joongsuk Hwang from the Police Service of the City of New York.


JAMES P O'NEILL
POLICE COMMISSIONER

EFFECTIVE: July 13, 2017

COURTESY • PROFESSIONALISM • RESPECT



POLICE DEPARTMENT

May 31, 2017

-----X
In the Matter of the Charges and Specifications : Case No.
- against - : 2015-13396 &
Police Officer Joongsuk Hwang : 2016-15449
Tax Registry No. 943383 :
Brooklyn Court Section :
-----X

At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable David S. Weisel
Assistant Deputy Commissioner Trials

APPEARANCE:

For the Department: Jamie H. Moran & Samara Halpern, Esqs.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Hugo G. Ortega, Esq.
Tanner & Ortega LLP
30 Vesey Street, Penthouse Suite
New York, NY 10007

To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

COURTESY • PROFESSIONALISM • RESPECT

Charges and Specifications:**Disciplinary Case No. 2015-13396**

1. Said Police Officer Joongsuk Hwang, while off-duty and assigned to Narcotics Borough Queens, on or about April 5, 2015, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Police Officer pointed what appeared to be a black handgun, at an individual known to the Department and stated in sum and substance "I am gonna fucking kill you" (*As amended*)
P.G. 203-10, Page 1, Paragraph 5
PUBLIC CONTACT – PROHIBITED CONDUCT
2. Said Police Officer Joongsuk Hwang, while off-duty and assigned to Narcotics Borough Queens, on or about April 5, 2015, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that said Police officer engaged in a physical altercation with an individual known to the Department, in that Police Officer Hwang struck the individual in the face with what appeared to be a black handgun.
P.G. 203-10, Page 1, Paragraph 5
PUBLIC CONTACT – PROHIBITED CONDUCT
3. Said Police Officer Joongsuk Hwang, while off-duty and assigned to Narcotics Borough Queens, on or about April 5, 2015, failed to properly safeguard seven (7) of his eight (8) firearms. (*As amended*)
P.G. 204-08, Page 2, Paragraph 7 – FIREARMS GENERAL REGULATIONS
4. Said Police Officer Joongsuk Hwang, while off-duty and assigned to Narcotics Borough Queens, on or about April 5, 2015, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that after being involved in an off-duty incident, said Police Officer wrongfully failed to remain at the scene of the incident.
P.G. 203-10, Page 1, Paragraph 5
PUBLIC CONTACT – PROHIBITED CONDUCT
P.G. 212-32, Page 1, Paragraph 1 – OFF-DUTY INCIDENTS INVOLVING UNIFORMED MEMBERS OF THE SERVICE
5. Said Police Officer Joongsuk Hwang, while off-duty and assigned to Narcotics Borough Queens, on or about April 5, 2015, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that after being involved in an off-duty incident, said Police Officer wrongfully failed to request the response of the patrol supervisor, precinct of occurrence.
P.G. 203-10, Page 1, Paragraph 5
PUBLIC CONTACT – PROHIBITED CONDUCT
P.G. 212-32, Page 1, Paragraph 1 – OFF-DUTY INCIDENTS INVOLVING UNIFORMED MEMBERS OF THE SERVICE
6. Said Police Officer Joongsuk Hwang, while off-duty and assigned to Narcotics Borough Queens, on or about April 5, 2015, wrongfully consumed an intoxicant to the extent that said Police Officer was unfit for duty.
P.G. 203-04, Page 1, Paragraph 2 – FITNESS FOR DUTY

7. Said Police Officer [REDACTED]
[REDACTED] *(Dismissed by Department before trial)*

8. Said Police Officer [REDACTED]
[REDACTED]
(Dismissed by Department before trial)

9. Said Police Officer [REDACTED]
[REDACTED]
(Dismissed by Department before trial)

10. Said Police Officer [REDACTED]
[REDACTED] *(Dismissed by Department before trial)*

Disciplinary Case No. 2015-15449

1. Said Police Officer Joongsuk Hwang, while on duty and assigned to Brooklyn Court Section, on or about July 12, 2015, having searched Rashaad Strickland and taken Mr. Strickland's watch into custody, did thereafter fail and neglect to prepare a Property Clerks invoice Worksheet for said property as required.
P.G. 218-01, Page 1, Paragraph 3 – PROPERTY
2. Said Police Officer Joongsuk Hwang, while on duty and assigned to Brooklyn Court Section, on or about July 12, 2015, having searched Rashaad Strickland and taken Mr. Strickland's watch into custody, did thereafter fail to safeguard said property as required.
P.G. 203-10, Page 1, Paragraph 5
PUBLIC CONTACT – PROHIBITED CONDUCT

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before the Court on March 2 and 3, 2017. Respondent pleaded Not Guilty to Specification Nos. 1, 2 and 6 in Case No. 2015-13396. He pleaded Guilty to Specification Nos. 3-5 and testified in mitigation of the penalty. Specification Nos. 7-10 were dismissed by the Department before trial. Respondent pleaded Guilty to both specifications in Case No. 2016-15449 and testified in mitigation of the penalty. The Department called Yi Fang and Captain Bienvenido Martinez as witnesses. Respondent called Sergeant Thomas Hardell as a witness and testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, the Court finds Respondent Guilty of Specification Nos. 1, 2 and 6. Having pleaded Guilty to Specification Nos. 3-5 in Case No. 2015-13396, and to Specification Nos. 1 and 2 in Case No. 2016-15449, Respondent is found Guilty.

FINDINGS AND ANALYSIS

Case No. 2015-13396

Introduction

The following facts are undisputed. Early on Sunday, April 5, 2015, at approximately 0200 hours, while driving home from a night out with friends, which included several alcoholic beverages, Respondent was involved in an altercation with another motorist, Yi Fang, in the vicinity of 28th Avenue in Flushing, Queens. At some point, Respondent unholstered his off-duty firearm and pointed it at Fang. The firearm subsequently made contact with Fang's face, causing a small laceration to the area above his lip. Shortly thereafter, Fang called 911 to report

could have been following him to rob him. He nevertheless pulled over, exited his car, and approached the other vehicle. At that point, Respondent also had exited his car and they stood between six and eight feet from each other. Fang admitted that when he approached Respondent's car and saw he was Asian, he "felt more encouraged" because in Fang's view, in the United States "the Asians are afraid of . . . the blacks, Hispanics, and the whites." He was not angry when he first exited his car to confront Respondent for following him, but when he realized that Respondent was Asian, he became angry (Tr. 31-33, 42, 50-53).

According to Fang, both men cursed at each other, in fact Fang was cursing more than Respondent. But the argument was brief, lasting at most two minutes. Fang began walking back toward his car. As he was walking, he heard Respondent say something to the effect of "I can find you." In response, Fang gestured toward Respondent with his middle finger before entering his car. Respondent then rushed toward him with a gun. With the gun pointed at Fang's forehead, Respondent pulled on the driver's side door while saying, "I'm going to kill you." Fang testified that he had not had enough time to close his door before Respondent rushed at him and began pulling the door open (Tr. 33-37, 59).

Respondent then struck Fang with a "flat surface" of the gun just below his nose, causing it to bleed for between 10 to 20 minutes. Fang did not recall the exact motion made by Respondent to strike him with the gun. After being struck, Fang pulled his car door closed and started driving away. Respondent held onto the car door and continued to pull the door. After driving a short distance down the street, Fang called 911 to report that he had been assaulted. He told the 911 operator that Respondent had used a gun to "punch" him, although Fang was speaking English and not his native Mandarin to the operator, and that word was suggested by the operator herself. According to Fang, when Respondent saw that he was calling 911, he also drove away. Fang decided to follow Respondent to get his license plate number while he waited

the incident. Respondent left the scene, made no notifications, and eventually drove home, where he drank two more beers before going to bed.

At approximately 0600 hours, members of the Internal Affairs Bureau responded to Respondent's residence within the confines of the 109 Precinct. Respondent was ordered to locate his firearms and get dressed because he would be going to the 109 Precinct. Respondent retrieved seven firearms from his bedroom, all of which had been unsecured, despite the existence of a safe in Respondent's closet. The supervisors found Respondent to be unfit for duty due to intoxication.

Respondent has pleaded Guilty to failing to notify the Department, remain at the scene, and safeguard the firearms that were found in his bedroom. The contested issues are whether Respondent threatened to kill Fang while pointing his firearm at him, whether Respondent struck him in the face with the firearm, and whether he was unfit for duty when IAB arrived at his residence.

YI FANG testified, through a Mandarin interpreter, that he resided in [REDACTED] and worked at a cell phone repair shop in [REDACTED]. On April 5, 2015, at approximately 0200 hours, Fang was traveling home from work in his SUV on the Whitestone Expressway. According to Fang, there was no traffic at that time, but when he got to the [REDACTED] exit, where he exited for home, a car behind him began flashing its lights. Fang slowed down and continued driving home, but the car continued to follow him. Fang testified that he did not intentionally cut any vehicle off and he was unsure why the other car flashed its high beams (Tr. 22, 26-29, 49, 59).

Once off the expressway, Fang eventually turned from [REDACTED] Street onto [REDACTED] Avenue. He made a U-turn and the other car did the same. Fang exited his car and walked over to the other vehicle, which also had pulled over. Respondent was the driver. Fang asked why Respondent was following him and a shouting match ensued. Fang thought that the other driver

for police officers to respond. After giving the operator Respondent's plate, he complied with her directive to stop following Respondent's car. He testified that while he waited for police to arrive he was "numb all over" and even urinated on himself (Tr. 38-41, 61, 65; see Ex. 3, photograph of injury; Ex. 4, recording of 911 call; Ex. 4a, transcript of 911 call).

According to Fang, at no point did Respondent identify himself as a police officer, but he could not recall if Respondent displayed his shield at any point (Tr. 43).

As a result of being struck in the face, Fang experienced swelling that lasted two months. He admitted, however, that he declined to go to the hospital after he was seen by responding emergency personnel (Tr. 62-63).

CAPTAIN BIENVENIDO MARTINEZ responded to Respondent's residence in his role as the Internal Affairs Bureau duty captain at approximately 0600 hours on April 5, 2015. The officers investigating Fang's 911 call had determined that Respondent was the other driver and a member of the service. The patrol duty captain, Captain Nicola Ventre, and another IAB investigator, Sergeant Idris Guven, were with Martinez. A woman, likely Respondent's mother, answered the door and retrieved Respondent. He was wearing a T-shirt and boxer shorts. Martinez and the officers went with Respondent to his bedroom to retrieve his firearms and so Respondent could get dressed and come with them (Tr. 99-103, 108-10, 115-23).

Martinez described Respondent as somewhat "confused" and "sluggish" once they got to the bedroom. Respondent kept walking from one end of the room to another, looking in drawers, bags and boxes for the eight firearms listed on his force record. The room was about 12 x 12 feet and not neatly organized. All the while, the supervisors were telling Respondent to find the weapons and get dressed. Martinez asked Respondent what he was doing but did not receive a response. At one point, Respondent asked the officers to leave the room but he was re-instructed to just get dressed and find his weapons. Respondent eventually found seven of them, but it took

him 10 to 15 minutes just to find one. The guns were located in several different areas of the room but some were with each other. It was possible, according to Martinez, that one firearm was under Respondent's mattress and six others were in a gym or duffel bag. Respondent never looked in any safe for his firearm. The eighth was located at his command (Tr. 103-06, 110-11, 123-29, 138, 140, 142-43).

Martinez memorialized his observations of Respondent in a fitness for duty report (Ex. 5). He noted that Respondent had a moderate odor of alcohol on his breath, still had not gotten dressed, and appeared to be confused. In Martinez's view, to "have a supervising officer speaking to you at this time in the morning . . . this is not a social occasion that we're having, this is something that we have to take care of business and you're not getting dressed after you're being told to get dressed." Even to come to the door that way, once Respondent knew supervising members of the service were there to see him, was odd. Moreover, Respondent could not locate even one firearm within a reasonable period of time. A uniformed member of the service should know where his firearms are at all times. Respondent did not seem to understand what the supervisors were telling him, although he was steady on his feet and his speech and face were normal. Martinez nevertheless deemed Respondent to be unfit for duty. He still could smell the alcohol on Respondent's breath after his removal to the 109 Precinct and arrest (Tr. 105-15, 119-20, 124-25, 129-37).

RESPONDENT testified that in April 2015 he was assigned to Narcotics Borough Queens. On April 4, 2015, Respondent worked until 2000 hours. He went home to the apartment within the confines of the 109 Precinct that he shared with his parents. He went back out shortly thereafter to meet friends, driving his SUV. He first went to a bar in Bayside. He consumed both food and alcohol there, including three vodka and sodas. He also drank water. At approximately midnight, Respondent drove to a Korean restaurant in Flushing to meet other

friends. There, he also ate and drank, including water and a Korean pale lager called Hite. The beer was poured from a pitcher into smaller cups, of which Respondent had two. Respondent left around 0130 hours on April 5, 2015, and drove a friend from the restaurant to Rego Park (Tr. 153, 160, 162-68, 245-46).

Respondent then drove home to his own residence, travelling onto the Whitestone Expressway. His intention was to get off at the [REDACTED] exit. As he got into the exit lane, an SUV cut in front of him, driving through the area marked off with painted stripes to demarcate the main road from the exit. Respondent had to "slam on the brakes" to avoid an accident. He admitted that he high-beamed the other driver with his headlights, but claimed this only was to let the other driver know "there was a vehicle behind." He first testified that he did so "[a]pproximately" twice, then amended this to say that he did so "just once." Respondent asserted he only did so because he was nervous and scared that he almost got into an accident. He claimed that he was not angry at all (Tr. 169-71, 193, 239-40).

Respondent indicated that he exited onto the service road. He described his emotions as "kind of nervous and scared because I almost got into an accident." At the first light, which was [REDACTED] he was parallel with the other car. He did not make eye contact and did not know if the other driver did either. Respondent proceeded through the intersection and turned right a block or two later. He denied following Fang, but noticed that there was a vehicle behind him. Respondent kept going onto [REDACTED] then turned onto [REDACTED] toward [REDACTED]. He noticed that the vehicle was following in the same direction (Tr. 172-77, 193).

Respondent at this point was near his house. He did not park the car, however, because he wanted to see if the vehicle was following him. He made a left onto [REDACTED] Street, which the other car did as well. Respondent turned onto [REDACTED] avenue and made a U-turn at the end of the block. The other vehicle blocked Respondent as he was making the turn. Respondent described

himself as nervous, "shocked" and afraid. The other driver, Fang, got out of his vehicle but Respondent remained inside (Tr. 177-81).

Respondent testified that Fang looked angry and his arms were "swinging erratically." Fang started banging on Respondent's driver side window with his fists, so much that Respondent thought it would shatter. Fang then returned to his vehicle. Respondent got out of his own car, identified himself as a police officer with his shield, and yelled out "Police, don't move." Respondent "was in fear for my safety" and did not know what Fang was capable of. Although he was scared, he got out of his car because "[i]t was a judgment that I made at that time and just let the individual know that I'm a police officer." He was considering taking police action. Respondent admitted that Fang was closer to Fang's own vehicle than to Respondent's at that moment. They were about eight feet away from each other. Fang angrily and quickly turned back around toward Respondent (Tr. 181-86, 240-41).

Respondent testified that he drew his firearm from his waistband for "safety" reasons. He pointed the weapon "in the general direction" of Fang. Fang was within arm's length of Respondent. As Respondent drew and raised up the gun, "there was contact" between the front of the barrel and the front of Fang's face. Respondent claimed that Fang walked into his firearm. Fang ran back to his vehicle and shut the door. Respondent did the same and drove away. He denied threatening to kill Fang or using profanity towards him at any point. Respondent asserted that he did not know Fang was injured when they left the scene (Tr. 186-88, 195-96, 217, 236).

Respondent stated that he drove to the 109 Precinct stationhouse to report the incident. He did not immediately call 911, an omission he described as a lapse in judgment. He "wasn't thinking straight at the time with adrenaline just rushing." While en route, Respondent called an officer he knew that was assigned to the 109 Precinct to see if he was working that night. Respondent was looking for him "[t]o assist me for police presence in uniform," but the

acquaintance was not working. When Respondent arrived at the stationhouse, he remained in his car for approximately ten minutes and did not enter. He stated that he again exercised poor judgment by not going inside because he was "nervous" and "didn't know what to do at the moment." Instead, Respondent just drove home (Tr. 188-92, 206, 241-42).

Respondent arrived at his residence sometime between 0230 and 0300 hours. Upon arrival, Respondent undressed to his boxer shorts and prepared for bed. During that time, he drank more beer, this time two cans of Coors Light. At approximately 0600 hours, Respondent's mother woke him up and informed him that there were three individuals from the Department at the door. Respondent put a T-shirt on and went to the door. Having just woken up, Respondent testified that he was "dazed, confused" when he greeted the officers at the door. Respondent testified that he was not absolutely sure why they were there, but thought it might be related to the confrontation with Fang. Respondent followed the orders that the officers gave him (Tr. 192, 197-99, 246-47).

Respondent acknowledged that none of the seven firearms located in his bedroom on April 5, 2015, were stored in the safe located in his closet, which is where they normally would have been (see Respt. Ex. A & B, photos of safe and closet). But he had gone to a shooting range in Pennsylvania with friends the weekend before and forgot to put them back in the safe upon return. He conceded that his parents had access to his bedroom (Tr. 161-62, 201, 247).

Respondent denied that it took 10 to 15 minutes for him to find the first firearm in his bedroom. Rather, the firearm he had with him during the incident with Fang "literally, as soon as you walk in it was on the right-hand side of the TV stand." It was two minutes or less from the time Respondent was woken up until he had to start looking for his firearms. Respondent conceded that it did take 10 to 15 minutes to gather all of his firearms from three separate areas

in his bedroom. One firearm was located on the TV stand, one was in a case located between a computer table and file cabinet, and five were in a range bag (Tr. 201, 204, 244-45).

[REDACTED]
[REDACTED]
[REDACTED] The disposition also involved a six-month order of protection in favor of Fang. As a result of the Department [REDACTED] that Respondent entered after the incident, he [REDACTED]
[REDACTED] (Tr. 20, 72, 236-37; Dept. Ex. 1, Oct. 5, 2015, official Dept. interview of Respt., pp. 3-4).

SERGEANT THOMAS HARDELL testified as a character witness on behalf of Respondent. From approximately December 2012 to February 2014, Hardell was Respondent's direct supervisor in the 83 Precinct. Hardell and Respondent became personal friends and socialized outside of work. In his experience supervising Respondent, he never witnessed any behavior that raised concerns regarding the manner in which Respondent interacted with the public. In fact, Hardell testified that both he and Respondent "were involved in a lot of intense situations where he always maintained a level head and always maintained his cool." According to Hardell, Respondent often de-escalated situations and was very helpful to have around for that reason. (Tr. 74-77).

Hardell also testified that he had been in Respondent's company while Respondent was drinking alcohol but never saw him drink to the extent that he was unfit for duty. Hardell testified that in his opinion Respondent "is an asset to the Department and also very beneficial to other members of the service and also the community." He went on to state that he "can guarantee nothing like this would ever happen again" (Tr. 79).

Specification Nos. 1 & 2

Respondent is charged with pointing his off-duty firearm at Fang and stating "I am gonna fucking kill you." Respondent is also charged with striking Fang in the face with his off-duty firearm. Resolution of these specifications hinges on an assessment of credibility. At trial, Respondent categorically denied both threatening and using profanity toward Fang. Additionally, while it is undisputed that Respondent pointed his firearm at Fang, he claimed that he did not strike Fang with his firearm. Instead, he said, the contact with Fang's face occurred when Fang walked his face into Respondent's pointed firearm.

This court credits Fang's testimony and finds that Respondent did, in fact, say "I'm gonna fucking kill you" before striking Fang in the face with his firearm. Overall, Fang was a more credible witness, admitting to both unflattering and potentially embarrassing behavior during the incident. For example, Fang admitted to cursing at Respondent and giving him the middle finger. Additionally, he testified that he had urinated on himself, an admission a grown person is unlikely to admit unless true. Fang's 911 call that morning during which he stated that Respondent "used [a] gun to punch" him further corroborates his trial testimony (Ex. 4a, 911 call transcript, p. 7).

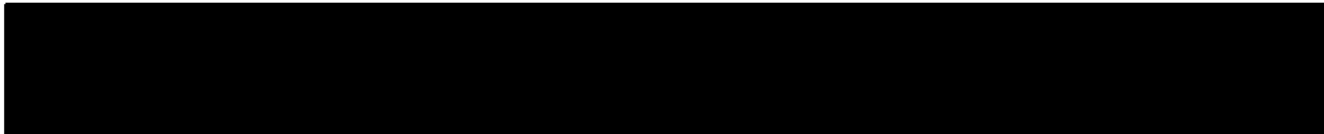
Fang admitted to feeling "more encouraged" once he realized Respondent was also Asian, noting that he would have been afraid of getting into an incident with someone who was black, Hispanic or white. This frank assessment of his own prejudices had the ring of truth, in the Court's view.

Respondent, on the other hand, portrayed himself as the victim throughout the incident, admitting only to "poor judgment" by failing to follow Department regulations to remain at the scene and request the response of the patrol supervisor. Despite being armed, Respondent testified that he felt "like a sitting duck" as Fang banged on his driver's side window, yet he

made no effort to call 911. He essentially re-instigated the incident when he got out of his car and confronted Fang, after Fang had banged on his window then walked back toward his own vehicle. Respondent minimized his own misconduct, stating in the passive voice that "there was contact" between his weapon and Fang's face. Further, it is unlikely that someone would walk into a gun pointed at him.

Respondent's credibility was further tarnished when he testified that the only phone call he made after the incident was to a police officer assigned to the 109 Precinct, an officer that Respondent insisted was only an acquaintance and not a friend. Respondent testified that he called because he wanted assistance from a "police presence in uniform." If that was truly Respondent's intention he should have called 911. Instead, it is far more likely that Respondent, concerned he had just been involved in an off-duty incident, wanted advice on how to best handle the situation from someone he knew and trusted.

Incredibly, Respondent denied being angry when he high-beamed Fang, not even a little bit. This assertion the Court finds further damaging to his credibility. Respondent admitted only to being nervous and scared after feeling like he narrowly had escaped a car accident. That does not explain the high-beaming.



In sum, Respondent's version of events does not make sense. His claim that Fang's injury, though minor, was caused by Fang walking accidentally face-first into a firearm pointed directly at him forcefully enough to injure himself is incredible. The possibility that Respondent could have caused a worse injury does not change the fact that he intentionally struck Fang in the face with the gun.

Furthermore, unlike Fang, Respondent has a strong interest in the outcome of this case. The charges he faces are serious and could potentially alter the course of his career. As a result, this Court rejects Respondent's attempt to convince this Court that he, a police officer, was the victim of a road rage incident in which the other driver suffered an injury and notified 911.

Thus, the Court finds the Department Advocate has satisfied its burden of proving that Respondent both threatened to kill Fang and struck him with his off-duty firearm. As such, Respondent is found Guilty of the misconduct charged in Specification Nos. 1 and 2.

Specification Nos. 4 & 5

Respondent has acknowledged his failure to remain at the scene of the incident and to request the response of the patrol supervisor. When questioned why he failed to remain at the scene, Respondent testified at trial that he used "poor judgment" and "wasn't thinking straight at the time with adrenaline just rushing." As Respondent has pleaded Guilty to these specifications, he is found Guilty.

Specification No. 3

Respondent acknowledged that none of the seven firearms located in his bedroom on April 5, 2015, were stored in the safe located in his closet or otherwise safeguarded. He conceded that it took 10 to 15 minutes to gather all of his firearms from three separate areas in his bedroom. The Court finds unacceptable Respondent's "explanation" that he "forgot" to safeguard his weapons after a weekend shooting range trip with friends. He had a week to put them in the large safe he had in his bedroom. In any event, as Respondent has pleaded Guilty to failing to safeguard seven of his eight firearms, he is found Guilty.

Specification No. 6

Respondent is charged with being unfit for duty at the time the three supervisors encountered him at his home. Respondent described himself at trial as a social drinker, testifying

that on an average night when he drinks, he has three drinks. On the evening in question, Respondent drank three vodka and sodas, two glasses of Hite beer, and two 12-ounce cans of Coors Light. Respondent testified that after his tour ended at 2000 hours on April 4, 2015, he came home and went back out shortly after. Thus, at the earliest, it seems reasonable that he would have started drinking between 2030 or 2100 hours. After the incident with Fang, Respondent arrived home at the latest by 0300 hours on April 5, 2015. He had the two additional beers before going to bed, and testified that he was sleeping approximately two hours before the supervisors arrived around 0600 hours.

Therefore, Respondent consumed seven alcoholic drinks over the course of at most seven and a half hours. This is a significant amount of alcohol, and by Respondent's own estimation, this was not an average night of drinking. In fact, he consumed more than double the number of drinks he testified to consuming on an average night.

Furthermore, a look at the totality of the circumstances regarding this incident demonstrates that the alcohol Respondent consumed impacted his behavior to such an extent that his behavior evinced he was not fit for duty. There was an altercation in which Respondent pointed his firearm at another driver as the result of a simple road rage incident, left the scene, and failed to report any portion of the incident to the Department. But more than that, when he returned home, Respondent thought it wise to consume two more beers before going to sleep. This is not the behavior of a sober individual.

Additionally, the 10 to 15 minutes it took Respondent by his own admission to gather his firearms from a relatively small room serves as a further indication that he was confused and not able to think clearly as the result of being intoxicated. Why would it have taken him so long to find his weapons? He had enough time to wake up and get his bearings. The reasonable answer

is that he was still too drunk to realize where his guns were. A sober person would have found them a lot sooner.

Also in evidence was the testimony of IAB Captain Bienvenido Martinez, his fitness for duty report, and the fitness for duty reports of the patrol duty captain Captain Nicola Ventre, and IAB investigator Sergeant Idris Guven, following their observations of Respondent in his residence at 0600 hours (Exs. 5-7, fitness for duty reports).

As previously discussed, Martinez testified that despite Respondent appearing steady on his feet and speaking normally, he believed him to be unfit for duty based on the odor of alcohol on his breath, his slow response to instructions, and the fact that Respondent either did not understand the orders given to him or was not able to comply with the orders in a timely manner.

Ventre's fitness for duty report denoted the following: Respondent had a moderate odor of alcohol on his breath, his face appeared to be flushed, his clothing was disheveled, he appeared to be confused, and his eyes were glassy or watery, but he appeared steady on his feet and his speech was normal (Ex. 6).

Guven's report determined that Respondent was, in fact, fit for duty, despite the contrary findings of Martinez and Ventre. Guven did describe a moderate odor of alcohol on Respondent's breath, but observed no other indicia of intoxication (Ex. 7). In the Court's view, however, the objective, undisputed evidence of Respondent's alcohol consumption and his behavior after that consumption, as well as Martinez's in-court testimony about what he observed to determine the basis for his report, outweigh the differing opinion of Guven.

Thus, the tribunal finds that the Department proved, by a preponderance of the credible evidence, that Respondent was unfit for duty. Therefore, he is found Guilty of Specification No. 6.

Case No. 2016-15449

After Respondent was suspended from duty and placed on modified assignment, he was assigned to the Brooklyn Court Section. On July 12, 2015, there was an arrestee named Rashaad Strickland in the cells waiting to be arraigned. Respondent and other officers saw Strickland make a hand-to-hand motion with another arrestee in a manner consistent with a narcotics transaction. The individuals were separated and re-searched. Strickland, however, resisted this and struggled with the officers. He was handcuffed and brought to a cell designated for an individual prisoner. His shoelaces and belt were removed from him. The officers also removed a watch that Strickland was wearing and had fallen off during the struggle (Tr. 153-56, 248-50).

Respondent testified that he placed all of Strickland's removed property, including the watch, on a ledge outside the cell. He vouchered several glassine envelopes, but did not think it was necessary to voucher the watch, which did not appear to be expensive. He then went to process the re-arrest of Strickland. The next day, Respondent learned that the watch had gone missing and Strickland was alleging he had stolen it (Tr. 155-59, 234-35, 250-51).

As Respondent has pleaded Guilty to failing to safeguard the watch and prepare a property clerk's worksheet for it, he is found Guilty.

PENALTY RECOMMENDATION

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on January 10, 2005. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department has requested termination as a penalty, stating in closing argument that Respondent "is a liability to the Department and to the City" (Tr. 274). In support of this

recommendation, the Advocate cited to three cases. None of these imposed termination, but none of them involved an assault using a firearm. Therefore they are not really applicable.

Nevertheless, the Advocate noted the presence of alcohol, including after the incident with Fang had concluded, and the extremely unsafe and baffling manner in which Respondent's weapons were kept in his bedroom (Tr. 272).

The Court's penalty recommendation is framed first and foremost by its doubts about Respondent's ability to meet the standards of judgment and awareness necessary to be a police officer. After having five alcoholic drinks over the course of at most five hours, Respondent instigated this entire incident by high-beaming Fang in the first place. While Fang got out of his car first, after yelling and banging on Respondent's window, he walked back toward his own vehicle. Respondent then re-instigated the incident by getting out of his vehicle and pointing his firearm at Fang.

Respondent purportedly took police action by identifying himself as a member of the service and pointing the firearm, yet after striking Fang with the gun Respondent failed to report any of this to the Department. He claimed that he made a phone call for "assistance" to an officer assigned to the precinct of occurrence, but under the circumstances it is more likely Respondent knew the trouble he was in and wanted to mitigate the damage.

Respondent further displayed bad judgment by returning home and having two more beers before going to bed. He went to bed, intoxicated, in a small room that contained seven firearms in various places. This easily could have ended tragically. Moreover, many cases involving failure to safeguard firearms seen by this forum involve the failure to safeguard one firearm. Here, there were seven unsecured firearms, reflecting an extraordinary lapse in proper police conduct.

As a whole, the incident has demonstrated Respondent's inability to act as a police officer. The Court therefore recommends that he be **DISMISSED** from employment with the Department.

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner Trials

APPROVED
JUL 13 2017

JAMES P. O'NEILL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JOONGSUK HWANG
TAX REGISTRY NO. 943383
DISCIPLINARY CASE NOS. 2015-13396 & 2016-15449

On his last three annual performance evaluations Respondent received an overall rating of 4.0 "Highly Competent." He has been awarded four medals for Excellent Police Duty and two medals for Meritorious Police Duty [REDACTED]

Respondent has no prior formal disciplinary history. He was suspended from duty from April 5, 2015, to May 5, 2015, in connection with Case No. 2015-13396. Following his suspension, Respondent was placed on modified assignment, which remains in effect.

Respondent's monitoring history is as follows. From December 9, 2009, to December 22, 2010, Respondent was placed on Level 1 Force Monitoring for having three or more CCRB complaints in one year. Respondent was placed on Level 2 Discipline Monitoring on October 9, 2015, due to the instant charges and specifications. That monitoring remains ongoing.

For your consideration.

David S. Weisel
Assistant Deputy Commissioner Trials